

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Yaodi Hu

-vs-

Illinois Power Company

**Complaint as to service in Danville,
Illinois.**

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02-0249

ORDER

By the Commission:

In this proceeding, the above-referenced complaint, and then an amended complaint, were filed with the Illinois Commerce Commission ("Commission") against Illinois Power Company ("Illinois Power" or "IP") by Mr. Yaodi Hu ("Mr. Hu"). Among other things, Mr. Hu requests that Illinois Power be ordered to supply electric and gas services to certain locations in Danville, Illinois.

On December 11, 2002, a written notice of continuance was sent to the parties advising them of a hearing to be held on January 21, 2003 at 11:00 A.M. at the offices of the Commission in Springfield, Illinois.

On January 3, 2003, a written notice of ruling on a motion to compel filed by IP was served on the parties. That ruling directed Mr. Hu to either provide certain information to IP or to notify IP that Mr. Hu has no such information. Prior to the ruling, Mr. Hu was given two opportunities to respond to IP's motion to compel. No responses to the motion were filed by Mr. Hu.

On January 17, 2003, a written notice was sent to the parties advising them that they were permitted to appear by telephone at the hearing scheduled for January 21, 2003 at 11:00 A.M. The telephone number for the hearing room was provided in that notice. No motions to continue the hearing were filed.

Pursuant to the notices of December 11, 2002 and January 17, 2003, the matter was called for hearing on January 21, 2003 at 11:00 A.M. before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. IP appeared at the hearing through its attorney, who appeared in person. Mr. Hu did not appear at the hearing either in person or by telephone. Prior to the hearing, he did not notify the Commission or IP of an inability to appear.

At the hearing on January 21, 2003, IP represented that Mr. Hu had failed to either provide the information specified in the ruling of January 3, 2003, or to notify IP that he did not have such information.

At that hearing, IP made an oral motion to dismiss the complaint for failure by Mr. Hu to appear at the hearing and prosecute the complaint, and for failure by Mr. Hu to either provide the information specified in the ruling of January 3, 2003, or to notify IP that he did not have such information. The hearing was concluded at 11:25 A.M. on January 21, 2003. Subsequently, Mr. Hu sent a "notice", dated January 21, 2003, stating that he "was unable to attend the...hearing" and that he "was also unable to place [a] telephone call to...the hearing" due to "some emergencies" which were not identified.

On January 22, 2003, a written notice was served on the parties. That notice specified a date of January 31, 2003 for the filing by Mr. Hu of any response to IP's motion of January 21, 2003 seeking dismissal of Mr. Hu's complaint. No response to IP's motion to dismiss was filed by Mr. Hu.

A proposed order from the administrative law judge ("proposed order") was issued on February 19, 2003. The proposed order recommended that Mr. Hu's complaint be dismissed, without prejudice, for failure to appear at a hearing and to exercise due diligence in the proceeding, and for failure to comply with the above-referenced discovery ruling.

A schedule for filing any exceptions to the proposed order, and any replies thereto, was provided with the proposed order. No exceptions to the proposed order were filed by Mr. Hu or by IP.

In view of the information set forth above, the Commission finds that Mr. Hu's complaint should be dismissed, without prejudice, for failure to appear at a hearing and to exercise due diligence in the proceeding, and for failure to comply with the above-referenced discovery ruling issued January 3, 2003.

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) IP provides electric and gas service as a public utility pursuant to the provisions of the Public Utilities Act, 220 ILCS 5/1-101 et seq.;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and/or law;
- (4) the subject complaint proceeding should be dismissed without prejudice as hereinafter set forth.

IT IS THEREFORE ORDERED by the Commission that the instant complaint proceeding is hereby dismissed, without prejudice, for failure by Mr. Hu to appear at a hearing and to exercise due diligence in the proceeding, and for failure by Mr. Hu to comply with the above-referenced discovery ruling.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 26th day of March, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman